

# THE WESTERN PACIFIC RAILROAD COMPANY

WESTERN PACIFIC BUILDING, 526 MISSION STREET  
SAN FRANCISCO, CALIFORNIA 94105  
TELEPHONE: (415) 982-2100

WALTER G. TREANOR  
VICE PRESIDENT-LAW

KATHERINE M. GRIFFIN  
GENERAL ATTORNEY  
MICHAEL P. HEARNEY  
EUGENE J. TOLER  
ATTORNEYS

July 18, 1979

File: 6116-57

DELIVERED TO:

Honorable H. G. Homme, Jr.  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

RECORDATION NO. 7494 Filed 1425

Date JUL 23 1979

INTERSTATE COMMERCE COMMISSION

CC Washington, D. C.

Dear Sir:

Enclosed for recording with the Interstate Commerce Commission are the original and two (2) certified true copies of an Assignment and Assumption Agreement dated April 4, 1979 between The Western Pacific Railroad Company, a California corporation, 526 Mission Street, San Francisco, California 94105 as Assignor and The Western Pacific Railroad Company, a Delaware corporation (formerly Newrail Company, Inc.) as Assignee, 526 Mission Street, San Francisco, California 94105 wherein the Assignor assigned and the Assignee assumed that certain Conditional Sale Agreement dated as of February 1, 1974 among Midwest Freight Car Company, 213 West Adams Street, Clinton, Illinois 61727, Vendor, Wells Fargo Bank National Association, 475 Sansome Street, San Francisco, California 94111 as Vendee and The Western Pacific Railroad Company (Assignor) as Guarantor. The Vendor's interest in such Conditional Sale Agreement was assigned to United States Trust Company of New York, 130 John Street, New York, New York 10038. Prior recording data:

<u>Document</u>	<u>Date</u>	<u>Recordation No.</u>
Conditional Sale Agreement	February 1, 1974	7494
Agreement & Assignment	February 1, 1974	7494
Amendment Agreement	June 15, 1974	7494-A

The document relates to the following railroad equipment:

93 40' 100-ton open top hopper cars manufactured by Midwest Freight Car Company; AAR mechanical designation HT; Road numbers WP 10086-10178, both inclusive.

Honorable H. G. Homme, Jr.  
July 18, 1979  
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Identifying marks: The words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20C" printed on each side of each unit.

Also enclosed is this Company's voucher in the sum of \$10.00 payable to the Interstate Commerce Commission being the prescribed fee for filing and recording the foregoing document.

Please return the original and counterpart with recordation data stamped thereon to the representative of the office of Kunkel Transportation Services, Inc., 425-13th Street, N.W., Suite 523, Washington, D.C. 20004, who will be delivering this letter on our behalf.

Yours very truly,



Katherine M. Griffin

KMG:jc

Attachment

# THE WESTERN PACIFIC RAILROAD COMPANY

INVOICE DATE	INVOICE NO.	AMOUNT	DISCOUNT	NET AMOUNT	DUE DATE
11 fee		10.00		10.00	

7494-B  
RECORDATION NO. .... Filed 1425

JUL 23 1979 - 12 50 PM

ASSIGNMENT AND ASSUMPTION AGREEMENT

INTERSTATE COMMERCE COMMISSION

1. PARTIES

This Assignment and Assumption Agreement is made this fourth day of April, 1979, between THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation (Assignor), and THE WESTERN PACIFIC RAILROAD COMPANY, a Delaware corporation, formerly named Newrail Company, Inc. (Assignee).

2. FACTS

2.1 Assignor is party to a Conditional Sale Agreement with Midwest Freight Car Company and Wells Fargo Bank, in which Midwest Freight Car Company assigned its interest to United States Trust Company of New York, effective February 1, 1974, recorded with the Interstate Commerce Commission on May 2, 1974, Recordation No. 7494, supplemented by an Amendment Agreement dated June 15, 1974, recorded on July 1, 1974, Recordation No. 7494-A, hereinafter collectively referred to as the "Agreement."

2.2 By a Purchase and Sale Agreement dated February 16, 1978, Assignor has agreed to sell substantially all of its assets, properties and rights of every kind and description, and business as a going concern to Assignee, and Assignee

has agreed to assume, with certain exceptions, all of the duties, liabilities and obligations of Assignor.

2.3 Pursuant to the Agreement described in Paragraph 2.2, Assignor desires to assign its interest in the Agreement, and Assignee desires to assume the obligations of Assignor thereunder.

### 3. ASSIGNMENT AND ASSUMPTION

3.1 Assignment. Assignor hereby sells, assigns and transfers to Assignee, its successors and assigns, all of its right, title and interest under the Agreement.

3.2 Assumption. Assignee hereby assumes and agrees to perform, fulfill and discharge in accordance with the terms of the Agreement, at the sole cost of Assignee, each and all of the obligations, covenants, terms and conditions to be kept or performed by Assignor under the Agreement, including, but not limited to (if applicable), Basic Rent, all Supplemental Rent and Casualty Value. Assignee will, at its sole cost and expense, appear in and defend every action or proceeding arising under, growing out of, or in any way resulting from, the Agreement, or the duties, obligations or covenants of Assignor thereunder, and to pay any and all amounts for which Assignor or Assignee may be held liable in respect thereof, including the payment

of all reasonable attorneys' fees incurred by Assignor in any such action or proceeding.

4. APPOINTMENT OF ATTORNEY IN FACT

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney, irrevocably, with full power to ask for, and receive, any property, or refund monies to which Assignor is entitled under the Agreement, or to enforce any and all other rights or privileges of Assignor under the Agreement.

5. MISCELLANEOUS

5.1 Assignee shall notify all other parties to the Agreement of this Assignment and Assumption Agreement, and shall cause this Assignment and Assumption Agreement to be recorded with the Interstate Commerce Commission promptly after the execution and delivery hereof.

5.2 Any provision of this Assignment and Assumption Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision

in any other jurisdiction. To the extent permitted by applicable law, Assignor hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

ASSIGNOR:

THE WESTERN PACIFIC RAILROAD  
COMPANY, a California corporation

By *W. H. Humboldt, Jr.*  
Its Sr. Vice President - Finance

Attest *H. D. Brew*  
Its SECRETARY

ASSIGNEE:

THE WESTERN PACIFIC RAILROAD  
COMPANY, a Delaware corporation  
(formerly named Newrail Company,  
Inc.)

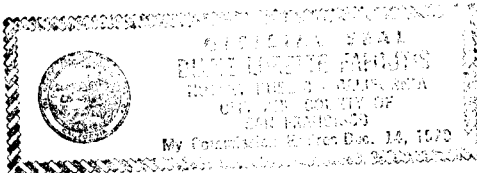
By *W. H. Humboldt, Jr.*  
Its Sr. Vice President - Finance

Attest *H. D. Brew*  
Its SECRETARY

STATE OF CALIFORNIA )  
 )  
CITY AND COUNTY OF SAN FRANCISCO ) SS

ON April 2, 1979, before me, the undersigned, a Notary Public in and for the said State, personally appeared R. W. STUMBO, JR. and W. D. BREW, known to me to be the persons who executed the within Instrument, on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within Instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.

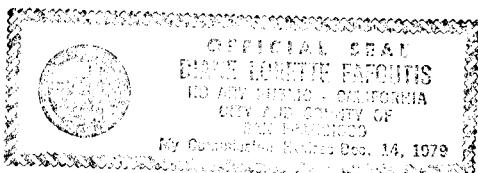


Diane Lorette Lafontis  
Notary Public in and for said State

STATE OF CALIFORNIA )  
 )  
CITY AND COUNTY OF SAN FRANCISCO ) SS

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